

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, JULY 11, 1996

Chairman Heavey called the meeting to order at 1:35 p.m. at the Red Lion Inn, Pasco, Washington.

MEMBERS PRESENT: **EDWARD HEAVEY, Chairman; CURTIS LUDWIG, Vice Chair;
and LIZ McLAUGHLIN.**

OTHERS PRESENT: **FRANK MILLER, Director;
BEN BISHOP, Deputy Director;
SHARON TOLTON, Assistant Director, Special Operations;
SHERRI WINSLOW, Assistant Director, Field Operations;
CARRIE TELLEFSON, Special Assistant, Public Affairs;
JACKI FISCHER, Financial Investigations;
JONATHAN McCOY, Assistant Attorney General;
and SUSAN GREEN, Executive Assistant.**

Chairman Heavey introduced the WSGC staff and Commission members present. He asked for patience from the audience since he has only two years experience on the Commission, and the chair who just left had 11 years experience. The other two members are also fairly new and it may take awhile for the commissioners to get used to this process.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

GAMETEC, Inc., Minnesota MANUFACTURER OF PULL TABS

Ms. Fischer said this company is a wholly-owned subsidiary of Scientific Games Holdings Corporation. Scientific Games Holdings Corporation is one of the largest manufacturers of scratch-off lottery tickets in the nation. Their headquarters is located outside of Atlanta, Georgia, and they also have a plant in Gilroy, California. They have a pull tab manufacturing facility in Albert Lea, Minnesota. The company has applied for a Class "F" manufacturer's license.

Agents in the Financial Investigations Unit (FIU) began examination of Scientific Games Holdings Corporation's qualifications for licensure in late March of 1996. FIU agents examined samples of pull tab products that the company intended to sell in Washington. All noted areas of concern related to the company's pull tabs were discussed with the applicant and resolved. FIU agents also performed an on-site investigation of Scientific Games Holdings Corporation's financial and corporate records. The records were examined in detail to verify the company's ownership and corporate structure. Additionally, personal background checks of the company's officers were examined and verified.

At the conclusion of the on-site investigation, Scientific Games Holdings Corporation's representative were given a briefing regarding the Commission's production, record keeping, and reporting requirements. The WSGC staff recommends licensure of Scientific Games Holdings Corporation, d/b/a

GameTec, Inc., as a pull tab manufacturer.

Ms. Fischer introduced Marcy Lewis and Mary Able of GameTec.

Marcy Lewis said she is the pull tab marketing manager of Scientific Games Holdings Corporation and is from Atlanta, Georgia.

Mary Able said she's located in Minneapolis, Minnesota, and she manages the customer service department and the distribution center for GameTec. **Commissioner McLaughlin** asked if any employees of GameTec reside in the State of Washington. **Ms. Lewis** answered that there is a newly-hired employee named Scott Johnson, who will reside in Bellevue, Washington. The company intends to continue to employ Mr. Johnson as their representative in Washington. In addition to that, the company also has a licensed agent who resides in Washington.

Commissioner Ludwig moved for approval of GameTec, Inc., manufacturer license application; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

Commissioner McLaughlin moved for approval of the new licenses, changes, withdrawals and tribal certifications as printed in the published agenda; **Commissioner Ludwig** seconded the motion. *Vote taken, motion carried with three aye votes.*

QUALIFICATION REVIEWS

COLUMBIA BASIN DOMESTIC VIOLENCE SERVICES, Kennewick

Ms. Fischer said Columbia Basin Domestic Violence Services was formed in 1976 and has been licensed since 1985. During the last fiscal year, the organization served 1,945 clients in the form of shelter, food, clothing, medical and legal advocacy, transportation, and counseling free of charge. Additionally, the organization provided domestic violence education to the general public as well as to the public school systems in the greater Columbia Basin area. The organization opened its new bingo facility in April 1996.

Staff recommends approval for qualification as a charitable organization for conducting gambling activities in Washington.

Chairman Heavey asked if anyone from the organization is present; **Ms. Fischer** said that **Tom Morgan**, the General Manager, and **Freda Bond**, the Primary Bingo Manager, are both in attendance.

Joe Jackson, President of Columbia Basin Domestic Violence Services Board of Directors, thanked the Commission for its approval.

Commissioner Ludwig asked if the bingo facility was the new building on the north side of Gage Boulevard; **Mr. Jackson** replied that was correct. **Commissioner Ludwig** asked if business has increased with the new location; **Mr. Jackson** replied that he would defer that particular question to Freda Bond.

Freda Bond, Primary Bingo Manager, replied that attendance has not improved; however, the organization attributes that to the time of the year and the other activities in their area.

Commissioner Ludwig moved to approve Columbia Basin Domestic Violence Services; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

EDUCATIONAL INSTITUTE FOR RURAL FAMILIES

Ms. Fischer said Educational Institute for Rural Families (EIRF) was formed in 1974 and their mission is to improve the education and living conditions of migratory, seasonal, and low income families. The organization served 991 different children last year and 1,204 parents through their programs. EIRF is currently licensed to serve 500 children in eight different daycare facilities, two of which opened last year. Additionally, the organization provided free immunizations and vitamins to adults and children. Staff recommends approval for qualification as a charitable organization for conducting gambling activities in Washington.

Sara Stevens, EIRF's executive director is in attendance today.

Commissioner McLaughlin asked Ms. Stevens how EIRF is doing this year after the organization was in the hole to the tune of \$94,000 last year; **Ms. Stevens** replied that things are improving and the organization had tightened its belt. Part of the deficit was due to unexpected costs related to the opening of the two new facilities. The organization has made some cuts within the program and is watching its finances very closely now.

Director Miller said that he appreciated the cooperation and the effort put forth by EIRF during the last year.

Chairman Heavey moved to approve the qualification review of Educational Institute for Rural Families; **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

YAKIMA VALLEY O.I.C., Yakima

Ms. Fischer said Yakima Valley O.I.C. was formed in 1971 and their mission is to provide job training and educational/social services to unemployed and under employed persons. The organization served 35,830 clients last year. The Yakima Valley O.I.C. provides support to needy low income families by paying for rent, transportation, food, housing, and periodic emergency car repairs. The organization also supports youth sports to create recreation and leadership development of at risk youth, young men, women, and children by supporting athletic teams. Yakima Valley OIC met its required combined net income percentage and has upgraded its bingo license to a Class "K."

Staff recommends approval for qualification as a charitable organization for the purposes of conducting gambling in the state of Washington.

Chairman Heavey asked if anyone is present from the organization; **Tom Safford**, General Manager, Yakima Valley O.I.C., is in attendance today.

Mr. Bishop asked why there was a drop in pull tab income between 1994 and 1995; **Mr. Safford** replied that it was due to a change in allocation and a rise in the cost of paper products. **Mr. Bishop** asked the organization for some more definitive information regarding this matter; **Mr. Safford** agreed to get the Commission the information it asked for.

Commissioner Ludwig asked what "O.I.C." stands for; **Mr. Safford** replied that "O.I.C." stands for "Opportunity Industrialization Centers."

Commissioner McLaughlin moved to approve the qualification review of Yakima Valley O.I.C. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

YWCA OF YAKIMA, Yakima

Ms. Fischer said The YWCA of Yakima was formed to provide a strong, vital force in the community that is responsive to the needs of women and their families. They have been licensed by the Commission since 1974. The organization provides many services through different programs. Some of the programs include volunteer attorney services and Working Woman's Wardrobe, which is a program that provides free clothing and accessories to low income women in need of suitable apparel for job interview and/or employment. The organization's 72-hour program focuses on early intervention and prevention of repeat abuse against women. This program is conducted in conjunction and cooperation with the Yakima Police Department. Another program, the Child Link program, is conducted in cooperation with the Yakima County Courts and it provides supervised child visitation for parents and children who have been separated by the court system. YWCA of Yakima did not meet its required net income percentage of 13 percent for its last fiscal year; however, the organization is not currently participating in the net income moratorium but they do plan to apply for that in the future.

Staff recommends approval for qualification as a charitable organization for the purposes of gambling in the state of Washington.

Chairman Heavey asked if anyone from the organization is present; **Carol Chote**, Primary Bingo Manager, came forward.

Director Miller asked what the organization is looking at doing to raise its net income percentage; **Ms. Chote** said the organization is working at this time on some reporting issues with Special Agent Jeff Selleg, therefore the information that has been provided on net income compliance may not be correct.

Commissioner McLaughlin moved to approve the qualification review of the YWCA of Yakima. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

REVIEW OF FRIDAY'S AGENDA

Carrie Tellefson said there are compact amendments to the Swinomish and the Jamestown Tribal Compacts up for final action tomorrow that would add off-track betting as an approved game. Also up for final action is a rule authorizing keno bingo. There are two rules on the agenda for discussion. The first one is a continuation of the Public Card Room Enhancement Program emergency rule that was filed last month. The other rule up for discussion pertains to the effective dates for Commission rule making orders. There is one rule up for discussion and possible filing. The rule deals with commercial amusement game locations. There is also an addendum to the agenda, which is a petition for a declaratory ruling.

Commissioner McLaughlin asked if it would be possible to have a demonstration of Washington Blackjack at next month's Commission meeting during the study group sessions. **Director Miller** said yes, that would be possible. **Chairman Heavey** decided it would be best to schedule the demonstration for the conclusion of Thursday's Commission Meeting Agenda.

DEFAULT ORDER

Randy K. MacDonald, Case No. 96-0456

Ms. Tellefson said Randy MacDonald's application was denied. Charges were issued for denial due to a criminal history and for failing to disclose some of the items included in his criminal history. He did not respond to the administrative charges. Staff did receive a return receipt from certified mail showing that Mr. MacDonald did receive the charges, but he did not respond within the time period. Staff recommends denial of Mr. MacDonald's application for a license.

Commissioner Ludwig moved to accept the default order in accordance with recommendations of the WSGC staff and deny his license; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

GENERAL DISCUSSION/OTHER

Robert Saucier, said he is representing the Washington State Licensed Beverage Association, the Recreational Gaming Association, and the Washington State Bowling Proprietors Association. He said that at the June Commission meeting these three groups presented a petition for emergency rule making. The Commission chose at that time not to accept the filing of the emergency rule. The three groups were specifically asked to bring the petition to today's meeting. The petition has been amended substantially. There are now three rules included in the petition and the three groups feel that these rules are outside of the Card Room Pilot Study and Test. He requested that the petition be included in tomorrow's agenda so the Commission can decide whether to take action at that time.

Director Miller said this is the petition the Commission received today.

Chairman Heavey said if there isn't sufficient opportunity to review requests that relate to public policy, a problem can be created that could need correction later. Policy making bodies are to be deliberative bodies and unless there is a real emergency they should not act precipitously. The courts generally scrutinize very carefully emergency legislation and, in many cases, have determined that the Legislature did not act appropriately when they declared emergency. He believes that things should be acted on in an orderly fashion so that not only does the deliberative body have an opportunity to review it in an appropriate fashion, but that the general public has an opportunity to view it in a public fashion. He said a rule should be adopted stating that items for action must be received by the Commission at least 14 days prior to a Commission meeting in order to be on the agenda. He said he understands that this matter was discussed at the last meeting; however, he feels that because this matter affects public policy, it should be dealt with in an orderly fashion, and therefore placed on the agenda for the next meeting for filing and discussion. If it is something that affects public policy, it should be received in plenty of time for the staff to review the item and provide appropriate comments. **Commissioner McLaughlin** said she agrees with the Chairman.

Commissioner Ludwig asked if such a rule would, on occasion, create a hardship for the staff. **Director Miller** said this shouldn't cause any hardship. **Commissioner Ludwig** said he would appreciate learning more about this at tomorrow's meeting. **Director Miller** said the rule changes include card room tournaments, hourly fees, and gross receipts.

Commissioner Ludwig asked Mr. Saucier if he intended to be at tomorrow's meeting anyway. **Mr. Saucier** said yes, but he said this was already presented at the June meeting in LaConner. He also said the staff told them July 3 was the deadline for getting an item on the July agenda. **Commissioner Ludwig** said he can appreciate that it must feel like they are being sandbagged, but to the

Commission, it is imperative to get the job done right the first time. **Director Miller** reminded the Commission that the matter will be on the agenda next month if the Commission deems it not to be an emergency. He said he feels that a couple of the rules are duplicative of items included in the test.

Commissioner McLaughlin asked what the emergency is with regard to a card game. **Mr. Saucier** responded that the emergency does not pertain to the game itself but to the financial obligations the operators must meet by increasing profits. **Commissioner McLaughlin** said she would like something written, possibly by the staff attorney, about what constitutes an emergency. **Mr. Saucier** said the request before the Commission today is that the petition be included on tomorrow's agenda.

Commissioner Ludwig asked Director Miller what the time table would be if the Commission does not treat the petition as an emergency. **Director Miller** said if the rule is deferred to the August meeting, it would still become effective in January, unless it were passed as an emergency.

Chairman Heavey said he has reviewed the minutes and does not come to the same conclusion about the intentions of the Commission and staff. It will be determined at the Friday meeting.

Director Miller requested an executive session to discuss pending investigations.

Chairman Heavey adjourned the meeting and said there will be a brief executive session following adjournment.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, JULY 12, 1996

Chairman Heavey called the meeting to order at 10:00 a.m. at the Red Lion Inn, Pasco, Washington. He introduced the head table.

MEMBERS PRESENT: EDWARD HEAVEY, Chairman; CURTIS LUDWIG, Vice Chair, and LIZ McLAUGHLIN.

OTHERS PRESENT: FRANK L. MILLER, Director;
BEN BISHOP, Deputy Director;
SHARON TOLTON, Assistant Director, Special Operations;
SHERRI WINSLOW, Assistant Director, Field Operations;
CARRIE TELLEFSON, Special Assistant, Public Affairs;
JONATHAN McCOY, Assistant Attorney General;
and SUSAN GREEN, Executive Assistant.

APPROVAL OF THE MINUTES FROM THE JUNE 13 & 14, 1996, MEETINGS

Commissioner Ludwig moved to accept the minutes from the June 13 & 14, 1996, Commission meetings in La Conner, Washington, as set forth in the agenda packet; **Chairman Heavey** seconded the motion. Commissioner McLaughlin said she would abstain from voting because she did not attend the June meetings. *Vote taken, motion carried with two aye votes.*

CLASS III TRIBAL-STATE GAMING COMPACT AMENDMENTS TO AUTHORIZE OFF-TRACK BETTING

Chairman Heavey said the Commission may not be able to act on the amendments to the Swinomish compact and the Jamestown S'Klallam compact; **Mr. McCoy** said there must be at least five members present in order to vote on compacts and compact amendments. **Chairman Heavey** said he apologized for any inconvenience to those persons who may have attended the meeting solely to give testimony or hear testimony on this matter. He said the matter will be held over until next month's Commission meeting.

KENO BINGO

New Section WAC 230-20-247

Keno Bingo – Definitions and requirements.

Ms. Tellefson said this rule authorizes keno bingo, which is a variation of bingo. An amendment to this rule that occurred at last month's meeting is that the first line of the rule now states, "beginning August 1, 1996." The Commission ruled last month that this rule would become effective on August 1, 1996. Staff recommends adoption of this rule.

Chairman Heavey called for public comment and reminded those in attendance that this rule is up for final action and therefore this is the final opportunity to be heard with regard to this rule before the Commission takes action.

Kevin Crum, President, Washington Charitable Civic Gaming Association, said his association has worked very closely with Commission staff in developing this rule and the Association appreciates the effort put forth by staff. The passage of this rule will give the Association membership an opportunity to increase net revenues for their organizations and the Association hopes the Commission will adopt the rule.

Commissioner Ludwig moved to adopt the rule in accordance with recommendations of the WSGC staff; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

PUBLIC CARD ROOM ENHANCEMENT PROGRAM

New Section WAC 230-40-999

Public card room enhancement program – Pilot study and test

Ms. Tellefson said this is a pilot test to implement a bill that was passed by the Legislature last session authorizing increased levels of card room operations. At the Commission's discretion, up to 15 tables in a card room may be authorized instead of the previous limit of 5. The Commission may also authorize player supported progressive prize contests and various methods of collecting fees. Rather than presenting a thorough package to the Commission, an emergency rule was filed at last month's Commission meeting that authorized a year long test. A change in this rule from the version presented to the Commission last month is that the test has been extended to 18 months. Staff recommends further discussion of this rule.

Director Miller explained that staff is asking the Commission to amend the rule for filing purposes to allow for the 18 month test. The test has been extended only to give the WSGC staff additional time to bring the program into compliance. There was a request from the staff for more time to develop this program. The staff felt a 12 month time period was just a little too tight of a time period to develop this program. During the last two weeks, staff has had approximately 15 meetings of one hour each with individual licensees. The framework of an agreement between the staff, the Commission, and the licensees has been developed and next month the staff hopes to have all of those proposals before the Commission.

Commissioner McLaughlin asked if the commencement date should be later than July 1, 1996, or are there licensees already operating under this rule. **Ms. Tellefson** said this rule was filed as an emergency rule and the rule is already in effect. However, staff typically leaves the rule on the agenda for three months for discussion and public comment anyway.

Chairman Heavey asked if the extension of the time period to 18 months instead of the original 12 months was also requested by licensees.

Director Miller said no, the extension of the time period was requested by the staff in order to develop the program. Licensees will not be starting the program until August and there may be some licensees who won't start the program until September and the staff felt additional time would be beneficial in order to develop a better program.

Commissioner Ludwig said the extra time would also give licensees time to study the program and see how they like it. **Director Miller** agreed saying it certainly will and staff may have the rules packet together before 18 months if things go well and staff feels confident coming before the Commission.

Commissioner Ludwig asked if it looks like there might be a rules packet ready for the August meeting. **Director Miller** replied it looks very good for the August meeting. Staff has drafted approximately 15 agreements, which are in the preliminary stages. Currently the terms and conditions of each individual test and location are being drafted. The goal is to have a consistent theme throughout yet to give creativity and flexibility to each licensee to the extent that staff can really learn from this process.

Commissioner McLaughlin asked if the operators can come in at any time to participate; **Ms. Tellefson** said that anyone who has held a license for at least six months can join the test at any time. **Director Miller** said there is a six month requirement of operation to participate as a condition precedent. Statute says the Commission cannot limit the number of licenses in a location. **Director Miller** asked Mr. McCoy if the six month requirement was a limitation that could cause a problem. **Mr. McCoy** replied that the six month requirement is not a problem because it affects the qualifications for a particular kind of license and is not a limitation on the number of licenses.

Director Miller asked if it was decided to waive the six month requirement, would that be deemed a substantive change or could that be allowed to be changed at that point in time. **Mr. McCoy** answered that he felt the change could be made. If the change is a substantive change, that would affect whether or not it would be challengeable.

Chairman Heavey asked if final action on this rule would be at the August meeting. **Ms. Tellefson** replied that was correct.

Chairman Heavey called for public comment with regard to the rule.

Robert Saucier, representing the Washington State Licensed Beverage Association (WSLBA), the Recreational Gaming Association (RGA), and the Washington State Bowling Proprietors Association (WSBPA), said his groups are supportive of the test and see no problem in extending the test to 19 months. He said there is one problem they see, though, in that there are approximately 90 card room licensees that are operating in the state. Unless some things are enacted that are not in dispute between industry and staff, the hand of the card room operators is going to be forced to participate in the test. He feels it is appropriate to pass certain rules to allow certain card rooms to take advantage of certain aspects of the legislation that are less difficult to regulate, rather than having individual contracts for those who do not want to take advantage of the higher level aspects. **Director Miller** said staff wants the card room operators to participate in the test. Everything in the test is what the Legislature amended. A licensee can still run their operation the same way without coming into the test as staff currently allows. Staff does not expect 90 licensees to participate in the test. To date, only about 14 licensees have shown an interest in participating in the test.

Commissioner Ludwig asked if some rule changes might be proposed even before the 18 month time period has elapsed. **Director Miller** said that is correct. He said that the only issue he could foresee that would necessitate going forward might be the hourly rate issue if the Commission deems to remove that lid and allow a licensee to charge a hourly rate without going through the test. He feels many licensees are going to have a problem going to \$6 per hour, and the test will be driving the market more so than the old system. **Commissioner Ludwig** asked if, after six to eight months, staff finds out that something like the fee increase is working very well, the staff could do that while

continuing to test other things. **Director Miller** said yes, that could be done. He predicts that only 20 or so licensees will choose to participate in the test. He doesn't see 90 licensees participating in the test because of the requirements and the fact that it will be costly to participate in the program.

Robert Saucier said one of the problems with waiting until the August Commission meeting is that investors will withhold their support and operators will not be able to make business decisions until they know whether or not their contract will be approved. **Commissioner Ludwig** asked if the investor will also have to be approved prior to investing; **Director Miller** said yes, that is correct if the investor is going to have a substantial interest in the operation. **Commissioner Ludwig** asked if it would be to the investor's advantage to apply in advance of the contract approval. **Mr. Saucier** said no, that he did not think so.

Chairman Heavey encouraged the WSGC staff and licensees to work out those issues that can be accomplished by moving forward prior to the finish of the test.

EFFECTIVE DATES FOR COMMISSION RULE MAKING ORDERS

New Section WAC 230-12-005

Effective dates for commission rule making orders.

Ms. Tellefson said this rule sets forth the Commission's policy regarding when rules become effective. Generally, rule making orders passed during the months of January through June would be effective during the month of July and rule making orders passed during the months of July through December would be effective during the month of January. The Commission can also specify earlier or later dates as they deem necessary. Staff recommends further discussion.

Commissioner McLaughlin asked what is the reason for a rule that is adopted in January having to wait until July to become effective. **Ms. Tellefson** said part of the reason is for staff preparation and part of the reason is so that staff can issue rules twice a year so that licensees know what to expect instead of constantly receiving new rules. **Chairman Heavey** pointed out that this a style that the courts went to a number of years ago for rule amendments and that the purpose of this rule is for the efficiency of everybody involved.

Director Miller said that when rules were effective every month it was quite costly.

COMMERCIAL AMUSEMENT GAME LOCATIONS

Amendatory Section WAC 230-04-138

Commercial amusement games – Authorized locations

Ms. Tellefson said this would authorize crane amusement games in restaurants without the additional requirement of having three other entertainment activities. The Commission has the discretion to determine where these types of games would be located under the statute 9.46.0331. Staff recommends filing for further discussion.

Director Miller said the Commission's \$1 million reimbursement was conditioned on doing a study regarding this issue.

Commissioner Ludwig moved to file this rule for further discussion and possible final action in September; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

PETITION FOR DECLARATORY ORDER

Ms. Tellefson said this amendment to the agenda is a petition for declaratory order. Rob Saucier will be speaking on behalf of a number of organizations that filed this petition. There is a memo in the handout packet that sets forth the procedural options that the Commission can take in responding to such a petition. Within 30 days of receiving a petition for declaratory order, the Commission can do the following: it can enter an order declaring the applicability of the statute; it can set the matter for a specified proceeding to be held no later than 90 days after the receipt of the petition; it can set a specific time (no more than 90 days) by which it will enter an order; or it can decline to enter a declaratory order stating the reasons. Staff recommends that the Commission set a time to hear the issue and put on next month's agenda.

Commissioner McLaughlin asked for the definition of "declaratory order;" **Director Miller** answered that it is a request for a declaration from the Commission on the applicability of the statute to a set of facts. The WSGC staff has been working with the card room licensees in study group sessions on this request. **Commissioner McLaughlin** asked if the Assistant Attorney General can determine whether it's legal or not; **Ms. Tellefson** said there is a memo by Jon McCoy in the handout packet that analyzes the issue for the Commission. **Mr. McCoy** said the declaratory order process is essentially a way of making a policy pronouncement with regard to a particular area of law that's within the purview of the Gambling Commission to regulate. The Commission can decide to respond to the petition or decline to respond to the petition based upon various factors. He said his memo was in response to a WSGC staff request and now the question is being posed by the Commission itself, which puts him in an awkward position.

Commissioner Ludwig moved to accept the staff recommendation and set a hearing date of Thursday, August 8, 1996; **Commissioner McLaughlin** seconded the motion. **Chairman Heavey** said the August meeting will take place in Silverdale. He asked for public comment regarding the setting of the hearing; no one came forward. *Vote taken; motion carried with three aye votes.*

UNFINISHED OR OTHER BUSINESS

Chairman Heavey asked Rob Saucier to present his petition.

PETITION FOR EMERGENCY RULEMAKING

Amendatory Section WAC 230-02-110

Amendatory Section WAC 230-40-050

Amendatory Section WAC 230-40-055

Mr. Saucier, representing the co-petitioners, said the original petition was presented at the June Commission meeting in La Conner but was not filed. He said this petition asks for amendments to three particular rules. The first rule is WAC 230-02-110, which changes the definition of a gross gambling receipt. The second rule is WAC 230-40-050 regarding fees for card playing. It eliminates

the \$3.00 per half hour fee so that the market can dictate the fees per half hour. The last rule is WAC 230-40-055 and has to do with card tournaments. The co-petitioners feel that these three rules are directly related to the new law and do not need to be part of the test program.

Commission Heavey asked why this should be an emergency rule.

Mr. Saucier answered that there are card room licensees that are going out of business. This has been occurring for some time. For example, the increase of the \$3.00 per half hour is not going to help the vast majority of licensees, but it should not require any regulatory change at all. The forms and the enforcement should all stay the same. He doesn't feel it brings any harm to the public and he believes that it does help by preventing some licensees from going out of business. The pilot study and test is a good thing, but he does not feel it is necessary for implementing everything in the legislation. If this petition were passed by the Commission today, his facility would implement it beginning next week.

Commissioner Ludwig said it is his impression that, of the three rules, the \$3.00 per half hour rule is probably the most significant to Mr. Saucier because the non-participating licensees would not otherwise be able to raise their fees if they are not contracting on the trial period. **Mr. Saucier** said that is correct. It also helps the participating licensees because they are not yet participating. **Commissioner Ludwig** said, assuming that the Commission approves something on August 8 or 9, participants could implement the program immediately but non-participants would not have that benefit. With card rooms across the state experiencing tough times due to competition, how does raising the fee or cost to the player help business? Won't that become a further problem? **Mr. Saucier** answered that, on the surface, the answer is yes; however, in his card room, the fee is 25 cents per hand dealt, but his card room cannot exceed \$3.00 per half hour. If his card room could continue to collect the 25 cents per hand but not have that upper limit of \$3.00 per half hour, he could get more revenue in his card room today.

Commissioner Ludwig asked how many hands on the average can be dealt in a half hour. **Mr. Saucier** said his card room does about 125 hands per half hour now. He said they can't charge the player per hand because of the limit. They can start out charging per hand but they have to stop once the player has paid up to the limit. **Commissioner Ludwig** asked if the original rule was intended to allow a charge per hand. **Director Miller** answered no, it was not. The original rule called for one collection every half hour. The Commission has allowed licensees to collect per hand as long as they didn't exceed the \$3.00. Staff has no opposition to this rule being eventually filed because this is probably a rule that can go forward without the test. Those licensees that are participating in the test will not be faced with this issue because they will be able to charge whatever they desire.

Mr. McCoy said the statute that was passed this year removed the statutory limitation on the fee structure, but it did not remove the Gambling Commission's authority to set fee structure. Therefore, it is still within the Gambling Commission's purview to set a limit on the amount of fees that may be collected. That is one of the specific powers and duties of the Commission under RCW 9.46.070. In the absence of a rule change, the \$3.00 per half hour standard will stay in effect except within the confines of the test program. One of the requirements of the statute is that the Commission's fee structure be adequate to cover its cost for administration of whatever programs it is administering. One of the conditions of the pilot study is to determine what those costs would be.

Commissioner Ludwig said Mr. McCoy's comments bring up another point; he asked if the proposed rule, WAC 230-40-050, doesn't set some other fee. It is his understanding that it just removes the \$3.00 limitation. **Mr. Saucier** said that's correct. He said there is a limit as to what they can collect based on the market. The tribes don't have to charge the 25 cents per hand or the \$3.00 per half hour.

Commissioner Ludwig said this is new to him, but he can appreciate the market controlling what's

fair to the players and profitable to the licensees. He said there ought to be some limitation and asked if he would be satisfied if there were some other limit besides the \$3.00 per half hour rate; **Mr. Saucier** said no, that the way to regulate this market is by the wagering limit. Card room licensees are at a \$25 wagering limit and that limits a cap on how much licensees can charge. If the Commission chose to allow licensees to go up to \$250 or \$500 like the tribes, then that will increase the amount of fees that licensees can collect proportionately.

Director Miller clarified that the tribes' \$250 and \$500 wagering limits are for Class III house banked games. Their poker limits and Class II wagering limits are the same as licensees at \$25.

Commissioner McLaughlin asked if people are traveling from areas near card rooms in order to play farther away at a tribal casino; **Director Miller** said yes, that does happen. Rules are based on a limited regulatory role. This test will allow for greater regulation and scrutiny. The rules do limit commercial licensees.

Commissioner Ludwig said more time would be beneficial in order to study these issues; **Mr. Saucier** said he is asking that this be voted on today and filed as an emergency rule. **Commissioner McLaughlin** asked if this rule was passed in August, could the Commission pick an earlier effective date than January 1, 1997. **Director Miller** said filing the rule today as a non-emergency rule, this would be the first hearing and the rule would be up for final action in September with an effective date of whenever the Commission deemed appropriate. **Commissioner Ludwig** asked what would happen if the rule was filed as an emergency rule today. **Director Miller** answered that if this is filed as an emergency today; it becomes effective upon filing next week. It then stays on the agenda for three months for discussion so that the Commission can make it a permanent rule in October.

Commissioner Ludwig said that, of these rules, the most significant one is the \$3.00 limit per half hour for those licensees that are not participating in the test program. **Mr. Saucier** said that the most important rule is the one relating to gross receipts. He said the counties and cities may view it as a new source of revenue and decide to tax the licensees accordingly. **Director Miller** said it would be a part of the contracts. **Commissioner Ludwig** said some of these rules seem more appropriate to the test than the others. He asked if the gross receipts rule meant that about 75 of the licensees might be paying a higher tax than those that are participating in the test. **Director Miller** answered no, because the licensees can only do a progressive jackpot if they participate in the test. Adoption of that particular rule would not accomplish anything; it is better to put it in the contracts. If the licensees do not participate, this rule has no bearing on them. **Commissioner Ludwig** asked if this only applies to progressive jackpots. **Mr. Saucier** said he concurs if the Commission feels that putting that provision in the test is best. The really significant rule is the one regarding the \$3.00 fee. He said that if necessary, the co-petitioners would amend their petition to withdraw the other two rules. He asked that the Commission rule on this one particular rule as an emergency rule, approve it, and file it for discussion as a permanent rule and that discussion could continue over the next several months. **Commissioner Ludwig** asked for the WSGC staff's feeling on the rule. **Director Miller** said that, from a regulatory standpoint, the impact is minimal. He thinks Mr. Saucier made a valid argument on the per hand blackjack in that it probably does act as a limit. If the Commission deemed an emergency existed, staff has no objection to filing. If the Commission does not find it to be an emergency, staff would encourage the Commission to file it anyway so that the rule making process could begin.

Mr. Bishop said that if the Commission elects to file this, it is not clear that a rake of the pot would not be allowed. **Chairman Heavey** said he is not prepared to file this as an emergency, and that Commissioner Ludwig has raised some significant issues that need to be addressed by the staff. **Commissioner Ludwig** said that since a motion to file as an emergency would fail, it should be continued until next month so it could be filed as an emergency rule in August. **Chairman Heavey** said

the Commission may decide not to file it as an emergency at that time either.

Commissioner Ludwig moved to file the petition to amend WAC 230-40-050 for further discussion, but not as an emergency; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

Chairman Heavey thanked Mr. Saucier for his presentation.

Chairman Heavey adjourned the meeting.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant